

Ngali Mutunga

## MED PROTOCOL

**A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF  
ENERGY REGARDING CONSULTATION WITH NGĀTI MUTUNGA BY THE  
MINISTRY OF ECONOMIC DEVELOPMENT ON THE ADMINISTRATION OF  
CROWN OWNED MINERALS**

**1 INTRODUCTION**

- 1.1 Under the Deed of Settlement dated 31 July 2005 between Ngāti Mutunga and the Crown (the "**Deed of Settlement**"), the Crown agreed that the Minister of Energy (the "**Minister**") would issue a Protocol (the "**MED Protocol**") setting out how the Ministry of Economic Development (the "**Ministry**") will consult with the Ngāti Mutunga Governance Entity (the "**Governance Entity**") on matters specified in the MED Protocol.
- 1.2 Both the Ministry and Ngāti Mutunga are seeking a healthy and constructive relationship based on the principles of Te Tiriti o Waitangi/the Treaty of Waitangi.
- 1.3 The purpose of the Crown Minerals Act 1991 (the "**Act**") is to restate and reform the law relating to the management of Crown owned minerals. Section 4 of the Act requires all persons exercising functions and powers under the Act to have regard to the principles of Te Tiriti o Waitangi /the Treaty of Waitangi.
- 1.4 The Minister is responsible under the Act for the preparation of mineral programmes, the grant of minerals permits, and monitoring the effect and implementation of minerals programmes and minerals permits. The Ministry administers the Act on behalf of the Minister.
- 1.5 This MED Protocol will affect the Ministry's administration of the Act in the MED Protocol Area.

**2 PURPOSE OF THIS PROTOCOL**

- 2.1 With the intent of creating a constructive relationship between Ngāti Mutunga and the Ministry in relation to mineral resources administered in accordance with the Act in the MED Protocol Area, this MED Protocol sets out how the Ministry will exercise its functions, powers, and duties in relation to the matters set out in this MED Protocol.
- 2.2 The Governance Entity will have the opportunity for input into the policy, planning, and decision-making processes relating to the matters set out in this MED Protocol in accordance with the Act and the relevant Minerals Programmes issued under the Act.

**3 PROTOCOL AREA**

- 3.1 This MED Protocol applies across the MED Protocol Area which means the area identified in the map included in Attachment A of this MED Protocol together with the adjacent waters.

#### 4 TERMS OF ISSUE

- 4.1 This MED Protocol is issued pursuant to section 21 of the Ngāti Mutunga Claims Settlement Act 2006 (the "**Settlement Legislation**") that implements clause 9.7 of the Deed of Settlement, and is subject to the Settlement Legislation and the Deed of Settlement.
- 4.2 This MED Protocol must be read subject to the terms of issue set out in Attachment B.

#### 5 CONSULTATION

- 5.1 The Minister will ensure that the Governance Entity is consulted by the Ministry:

##### **New minerals programmes in respect of petroleum**

- 5.1.1 on the preparation of new minerals programmes in respect of petroleum which relate, whether wholly or in part, to the MED Protocol Area;

##### **Petroleum exploration permit block offers**

- 5.1.2 on the planning of any proposed petroleum exploration permit block offer (being a specific area with defined boundaries available for allocation as a permit in accordance with section 24 of the Act and the relevant minerals programme), which relates, whether wholly or in part, to the MED Protocol Area;

##### **Other petroleum exploration permit applications**

- 5.1.3 when any application for a petroleum exploration permit is considered, which relates, whether wholly or in part, to the MED Protocol Area, except where the application relates to a block offer over which consultation has already taken place under **clause 5.1.2**;

##### **Amendments to petroleum exploration permits**

- 5.1.4 where any application to amend a petroleum exploration permit, by extending the land or minerals to which the permit relates, is considered, where the application relates, wholly or in part, to the MED Protocol Area;

##### **New minerals programme in respect of minerals other than petroleum**

- 5.1.5 on the preparation of new minerals programmes in respect of Crown owned minerals other than petroleum, which relate, whether wholly or in part, to the MED Protocol Area;

##### **Permit block offers for Crown owned minerals other than petroleum**

- 5.1.6 on the planning of a competitive tender allocation of a permit block (being a specific area with defined boundaries available for allocation as a permit in accordance with section 24 of the Act and the relevant minerals programme), which relates, whether wholly or in part, to the MED Protocol Area;



### **Other permit applications for Crown owned minerals other than petroleum**

5.1.7 when any application for a permit in respect of Crown owned minerals other than petroleum is considered, which relates, whether wholly or in part, to the MED Protocol Area, except where the application relates to a competitive tender allocation of a permit block offer over which consultation has already taken place under **clause 5.1.6**;

### **Amendments to permits for Crown owned minerals other than petroleum**

5.1.8 when any application to amend a permit in respect of Crown owned minerals other than petroleum, by extending the land or minerals covered by an existing permit, is considered, and where the application relates, wholly or in part, to the MED Protocol Area.

5.2 Each decision on a proposal referred to in **clause 5.1** will be made having regard to any matters raised as a result of consultation with the Governance Entity, and having regard to the principles of Te Tiriti o Waitangi/the Treaty of Waitangi, particularly as those principles are set out in the relevant minerals programme from time to time, and taking into account the circumstances of each case.

## **6 IMPLEMENTATION AND COMMUNICATION**

6.1 The Crown has an obligation under the Act (as provided for in minerals programmes) to consult with parties whose interests may be affected by matters described in **clause 5.1** of this MED Protocol. The Ministry will consult with the Governance Entity in accordance with this MED Protocol and in accordance with the relevant minerals programme if matters described in **clause 5.1** of this MED Protocol area may affect the interests of Ngāti Mutunga.

6.2 The basic principles that will be followed by the Ministry in consulting with the Governance Entity in each case are:

6.2.1 ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues in relation to any matters under **clause 5** of this MED Protocol;

6.2.2 providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters described in **clause 5** of this MED Protocol;

6.2.3 ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process and the consideration by the Governance Entity of its submissions in relation to any of the matters described in **clause 5** of this MED Protocol; and

6.2.4 ensuring that the Ministry will approach the consultation with the Governance Entity with an open mind, and will genuinely consider the submissions of the Governance Entity in relation to any of the matters described in **clause 5** of this MED Protocol.

6.3 Where the Ministry is required to consult the Governance Entity as specified in **clause 6.1**, the Ministry will report back in writing to the Governance Entity on the decision made as a result of such consultation.

6.4 The Ministry will seek to fulfil its obligations under this MED Protocol by:

6.4.1 maintaining information on the Governance Entity's address and contact details as provided from time to time by the Governance Entity;

6.4.2 as far as reasonably practicable, ensuring relevant employees within the Ministry are aware of the purpose, content and implications of this MED Protocol;

6.4.3 nominating relevant employees to act as contacts with the Governance Entity in relation to issues concerning this MED Protocol; and

6.4.4 providing the Governance Entity with the names of the relevant employees who will act as contacts with the Governance Entity in relation to issues concerning this MED Protocol.

## 7 DEFINITIONS

7.1 In this MED Protocol:

**Act** means the Crown Minerals Act 1991 as amended, consolidated or substituted;

**Crown** means Her Majesty the Queen in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of the Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement;

**Crown owned mineral** means a mineral (as defined below) that is the property of the Crown under sections 10 and 11 of the Act or over which the Crown has jurisdiction in accordance with the Continental Shelf Act 1964;

**Deed of Settlement** means the Deed of Settlement dated 31 July 2005 between the Crown and Ngāti Mutunga;

**Governance Entity** means the Ngāti Mutunga Governance Entity;

**Mineral** means a naturally occurring inorganic substance beneath or at the surface of the earth, whether or not under water; and includes all metallic minerals, non-metallic minerals, fuel minerals (including coal and petroleum), precious stones, industrial rocks and building stones within the meaning of the Act and a prescribed substance within the meaning of the Atomic Energy Act 1945;

**Minister** means the Minister of Energy;

**Ministry** means the Ministry of Economic Development;

**Ngāti Mutunga** has the meaning set out in clause 1.5 of the Deed of Settlement;

**Petroleum** means:

- (a) any naturally occurring hydrocarbon (other than coal) whether in a gaseous, liquid, or solid state; or
- (b) any naturally occurring mixture of hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state; or
- (c) any naturally occurring mixture of hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state, and one or more of the following, namely hydrogen sulphide, nitrogen, helium, or carbon dioxide;

and, except in sections 10 and 11 of the Act, includes any petroleum as so defined which has been mined or otherwise recovered from its natural condition, or which has been so mined or otherwise recovered, but which has been returned to a natural reservoir for storage purposes in the same or an adjacent area; and

**Protocol** means a statement in writing, issued by the Crown through the Minister to the Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this MED Protocol.





ISSUED ON 7 December 2006

SIGNED for and on behalf of  
HER MAJESTY THE QUEEN  
in right of New Zealand by  
the Minister of Energy:

*David Shaw*

WITNESS

*[Signature]*

Name:

*Shane Jones*

Occupation:

*M.P.*

Address:

*Kiri Beach  
Manurewa*

Acknowledged by Te Rūnanga o Ngāti Mutunga on: 16 December 2006

*[Signature]*

*PSM Haami*

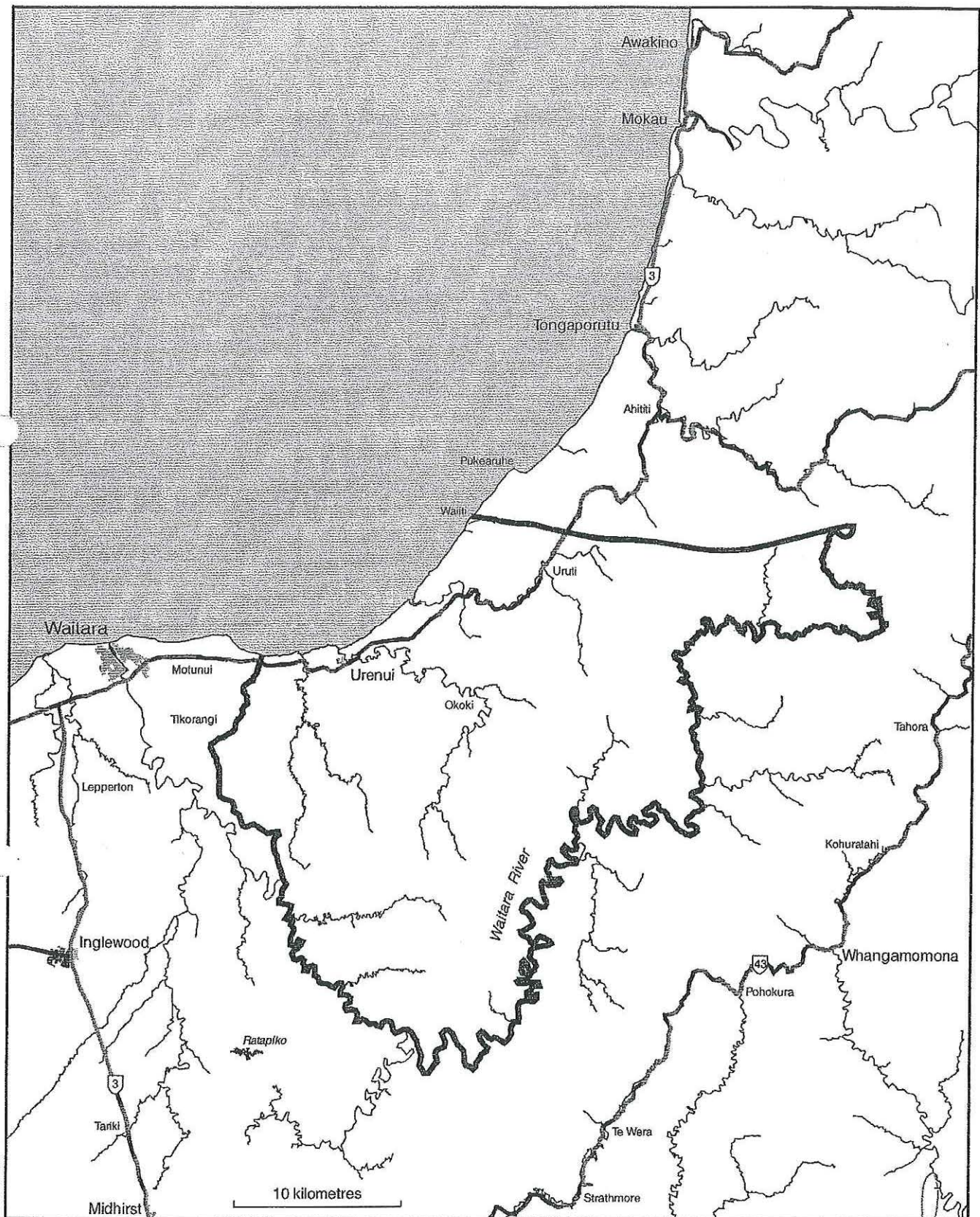
*[Signature]*

*Miriam Evans*

*[Signature]*

*[Signature]*  
*[Signature]*

ATTACHMENT A  
MED PROTOCOL AREA



Handwritten signatures and initials, including "CH".



## ATTACHMENT B

### TERMS OF ISSUE

This MED Protocol is issued subject to the provisions of the Deed of Settlement and the Settlement Legislation. These provisions are set out below.

#### 1 Provisions of the Deed of Settlement relating to this Protocol

##### 1.1 The Deed of Settlement provides that:

- 1.1.1 a failure by the Crown to comply with a Protocol is not a breach of the Deed of Settlement (clause 9.17); and
- 1.1.2 this MED Protocol does not restrict the ability of the Crown to interact or consult with any person including any iwi, hapū, marae, whānau, or other representative of tangata whenua (clause 9.18); and
- 1.1.3 this MED Protocol:
  - (a) is consistent with section 4 of the Crown Minerals Act 1991;
  - (b) does not override or diminish:
    - (i) the requirements of that Act;
    - (ii) the functions and powers of the Minister of Energy, or the Ministry of Economic Development, under that Act; or
    - (iii) the rights of Ngāti Mutunga, or a Representative Entity, under that Act (clause 9.9).

##### 1.2 Representative Entity has the same meaning in clause 1.1.3 of these terms of issue as it has in clause 1.11 of the Deed of Settlement.

#### 2 Authority to issue, amend or cancel Protocols

##### 2.1 Section 21 of the Settlement Legislation provides that:

- (1) *Each responsible Minister may—*
  - (a) *issue a protocol to the trustees in the form set out in Part 1 of the Cultural Redress Schedule; and*
  - (b) *amend or cancel that protocol.*
- (2) *A protocol may be amended or cancelled under subsection (1) at the initiative of either—*
  - (a) *the trustees; or*
  - (b) *the responsible Minister.*
- (3) *The responsible Minister may amend or cancel a protocol only after consulting with, and having particular regard to the views of, the trustees*

### **3 Protocols subject to rights and obligations**

#### **3.1 Section 22 of the Settlement Legislation provides that:**

*Protocols do not restrict—*

- (a) the ability of the Crown to exercise its powers and perform its functions and duties in accordance with the law and government policy, which includes (without limitation) the ability to—
  - (i) introduce legislation and change government policy; and*
  - (ii) interact or consult with a person the Crown considers appropriate, including, without limitation, any iwi, hapū, marae, whānau, or other representative of tangata whenua; or**
- (b) the responsibilities of a responsible Minister or a responsible Ministry; or*
- (c) the legal rights of Ngāti Mutunga or a representative entity.*

### **4 Noting of Protocol**

#### **4.1 Sections 26(1) and 26(2) of the Settlement Legislation provide that:**

*(1) A summary of the terms of the MED protocol must be noted in—*

- (a) a register of protocols maintained by the chief executive of the Ministry of Economic Development; and*
- (b) the minerals programmes affecting the MED protocol area when those programmes are replaced.*

*(2) The noting of the MED protocol is—*

- (a) for the purpose of public notice only; and*
- (b) not an amendment to the minerals programme for the purposes of the Crown Minerals Act 1991.*

### **5 Enforcement of Protocol**

#### **5.1 Section 23 of the Settlement Legislation provides that:**

*(1) The Crown must comply with a protocol while it is in force.*

*(2) If the Crown fails, without good cause, to comply with a protocol, the trustees may, subject to the Crown Proceedings Act 1950, enforce the protocol.*

*(3) Despite subsection (2), damages or any form of monetary compensation are not available as a remedy for failure by the Crown to comply with a protocol.*

*(4) To avoid doubt,—*


*(a) subsections (1) and (2) do not apply to guidelines developed for the implementation of a protocol; and*

*(b) subsection (3) does not affect the ability of a court to award costs incurred in enforcing the protocol under subsection (2).*

## **6 Limitation of rights**

6.1 Section 26(3) of the Settlement Legislation provides that:

*(3) The MED protocol does not have the effect of granting, creating, or providing evidence of an estate or interest in, or rights relating to, Crown owned minerals.*



PH



